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January 31, 2003

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Federal Communications Commission  
Office of Secretary

**BY HAND**

Marlene ti. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
c/o Vistronix, Inc.  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, DC 20002

**RE: Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,  
CG Docket No. 02-278**

Dear Ms. Dortch:

On behalf of Vector Marketing Corporation, and in accordance with Sections 1.49 and 1.419 of the Commission's Rules, 47 C.F.R. §§1.49 and 1.419, we are pleased to submit the attached Reply Comments in the above-captioned proceeding.

Should you have questions regarding the enclosed, or require further information, please do not hesitate to contact the undersigned.

Very Truly Yours,

Judith L. Harris  
James P. Schulz

cc: K. Dane Snowden  
Margaret Egler  
Richard Smith  
Erica McMahon

02-278-014  
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**JAN 31 2003**

Federal Communications Commission  
Office of Secretary

CG Docket No. 02-278

Judith L. Harris  
James P. Schulz  
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1301 K Street, NW  
Suite 1100 – East Tower  
Washington, DC 20005  
(202) 414-9200

Attorneys for Vector Marketing Corporation

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	
	)	

**Reply Comments of Vector Marketing Corporation**

Vector Marketing Corporation ("Vector"): by its attorneys, hereby submits its Reply Comments in the above-captioned proceeding.

**As** noted in the Comments Vector filed earlier in this proceeding, Vector is the U.S. marketing arm of Cutco Cutlery Corporation ("CUTCO"), a manufacturer of fine cutlery products employing approximately 675 Steelworkers in Olcan, New York. Vector markets CUTCO cutlery through a sales force of college-age students who sell CUTCO knives as local, independent sales contractors. Individually, these students usually work for only one or two seasons during their summer vacations or other school breaks in order to pick up a little extra spending money and gain valuable sales and business experience. They do not sell CUTCO knives over the phone, but make face-to-face sales presentations in potential customers' homes. Thus, their use of their telephones is generally limited to a few phone calls per day to friends, family members, and to other people to whom they have been personally referred.

In its Comments, Vector recommended that the Commission adopt a specific *de minimus* exemption from any requirements regarding do not call lists for small direct sellers, like

Vector/CUTCO representatives, who make a limited number of phone calls, from phones not located at telemarketing call centers, for purposes merely incidental to their jobs (such as to set up appointments for face-to-face sales presentations).

Vector slated:

Vector urges the Commission to create an exemption or “safe harbor” in any rules it may adopt for those whose use of the telephone is merely an incidental, albeit necessary, component of their jobs as independent sales representatives for direct-selling companies and/or who average fewer than a fixed number of calls per day. *For example, such a safe harbor might exempt from the Commission’s rules “any **culler** who uses a telephone, other than a telephone located at a telemarketing call center, for the sole purpose of making an appointment for a face-to-face meeting, and who **does not make more than 20 such calls in a single day.**”* Such a safe harbor would not apply to calls made by home-based telemarketers who use their own phones to conduct over-the-phone (as opposed to face-to-face) sales presentations or to make any other kind of high volume calls on behalf of telemarketers. Alternatively, the FCC might adopt an exemption similar to the “face-to-face” exemption currently contained in the FTC’s Telemarketing Sales Rule, which exempts “[t]elephone calls in which the sale of goods or services is not completed, and payment or authorization of payment is not required, until after a face-to-face sales presentation by the seller.”

At the time of Vector’s filing, the Federal Trade Commission (“FTC”) had not yet released its Amended Telemarketing Sales Rule (“ATSR”). The ATSR was released on December 18, 2002. On December 20, 2002, the FCC, via *Public Notice*, requested comments on the ATSR as it relates to the Commission’s rulemaking, and extended the Reply Comment filing window in order to afford parties sufficient time to prepare and file such comments.’

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<sup>1</sup> Vector Comments at 9 (emphasis added; internal footnotes omitted). The “face-to-face” exemption, in both the original and amended Telemarketing Sales Rule, is found at 16 C.F.R. § 310.6(c).

<sup>2</sup> Consumer & Governmental Affairs Bureau Announces An Extension Of Time To File Reply Comments On The Telephone Consumer Protection Act (TCPA) Rules, Public Notice, DA No. 02-3554, Dkt No 02-278, rel. Dec. 20, 2002.

Vector files these reply comments, in response to the FCC's *Notice*, to update its original comments in light of the FTC's recent actions.

Specifically, in the ATSR, the FTC did not extend the "face-to-face" exemption contained in its original Telemarketing Sales Rule to the new obligations it created regarding the establishment of a national do not call list. Therefore, that portion of Vector's original comments (quoted above) that proposes, as one possibility, that the FCC adopt a "face-to-face" exemption similar to the exemption contained in the FTC's original Rule is no longer relevant.

On the other hand, Vector's request that the FCC create a specific exemption for small companies with respect to obligations regarding do not call lists remains vital to Vector's well-being and to the well-being of similarly situated companies, for all the reasons set forth in Vector's original comments. Importantly, such an exemption would be fully in keeping with the enforcement intentions of the FTC regarding its revised rules, as expressed in a January 15, 2003, letter from Donald S. Clark, Secretary of the Federal Trade Commission, to Congressman Amo Houghton (R-NY), a copy of which is attached hereto. As the letter to Congressman Houghton states, the FTC intends to clarify in its Compliance Guide for Businesses that individuals such as Vector's/CUTCO's independent sales representatives, who call small numbers of personal referrals out of their own homes, will not be targeted for enforcement under the ATSR.

Therefore, Vector reiterates its request that the Commission adopt a carefully crafted exemption from the FCC's do not call requirements for direct sellers like Vector/CUTCO and its representatives. Indeed, a specific exemption tracking the language in the FTC's letter (e.g., an exemption from any obligations to check or maintain do not call lists for those who call a small number of personal referrals out of their own homes) would adequately address Vector's concerns. Such an exemption would harmonize the rules promulgated by the FCC under the Telephone Consumer Protection Act with the stated enforcement intentions of the FTC under the

ATSR. To that end, Vector further urges the FCC to work closely with the FTC staff to see that the FCC's exemption is specifically acknowledged and/or cross-referenced in the FTC's Compliance Guide

Respectfully submitted,

Vector Marketing Corporation

By:

Judith L. Harris

James Philip Schulz

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(202) 414-9234

Its Attorneys

## CERTIFICATE OF SERVICE

I hereby certify that I have this 31<sup>st</sup> day of January, 2003, caused copies of the foregoing "Reply Comments of Vector Marketing Corporation" to be served by first class mail, postage prepaid, on the following:

Michael K. Powell, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Kathleen Q. Abernathy, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Michael J. Copps, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Kevin J. Martin, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20554

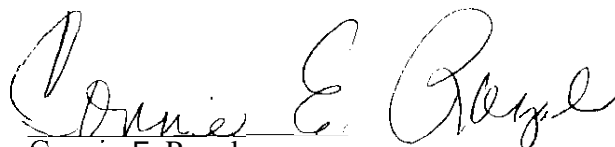
Jonathan S. Adelstein, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
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Connie E. Royal  
Reed Smith LLP

**ATTACHMENT**





Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

January 15, 2003

The Honorable Arno Houghton  
United States House of Representatives  
1111 Longworth House Office Building  
Washington, D.C. 20515

Dear Representative Houghton:

A member of your staff, Erica Perri, recently contacted the Commission concerning the possible effects which the amendments to the Telemarketing Sales Rule (TSR) may have on CUTCO and the 675 Steelworkers employed by the company. The Commission has now issued the final amended Rule and an accompanying Statement of Basis and Purpose, pursuant to its Rule Review, the Telemarketing and Consumer Fraud and Abuse Prevention Act, and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act). I have enclosed a copy of the news release describing this action for your information.

The amended Rule: (1) retains most of the original Rule's requirements concerning deceptive and abusive telemarketing acts or practices without major substantive changes; (2) establishes a national "do-not-call" registry maintained by the Commission; (3) defines "upselling" to clarify the amended Rule's application to those transactions, requires specific disclosures for upsell transactions, and expressly excludes upselling transactions from certain exemptions in the amended Rule; (4) requires that sellers and telemarketers accepting payment by methods other than credit and debit cards subject to certain protections obtain express verifiable authorization from their customers; (5) retains the exemptions for pay-per-call, franchise, and face-to-face transactions, but makes these transactions subject to the national "do-not-call" registry and certain other provisions in the abusive practices section of the Rule; (6) specifies requirements for the use of predictive dialers; (7) requires disclosures and prohibits misrepresentations in connection with the sale of credit card loss protection plans; (8) requires an additional disclosure in connection with prize promotions; (9) requires disclosure and prohibits misrepresentations in connection with offers that include a negative option feature; (10) eliminates the general media and direct mail exemptions for the telemarketing of credit card loss protection plans and business opportunities other than business arrangements covered by the

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The Honorable Ann Houghton -- Page 2

Franchise Rule<sup>1</sup>; (11) requires telemarketers to transmit caller identification information; (12) eliminates the use of post-transaction written confirmation as a means of obtaining a customer's express verifiable authorization when the goods or services are offered on a "free-to-pay conversion" basis; (13) prohibits the disclosure or receipt of the customer's or donor's unencrypted billing information for consideration, except in limited circumstances; and (14) requires that the seller or telemarketer obtain the customer's express informed consent to all transactions, with specific requirements for transactions involving "free-to-pay conversions" and preacquired account information.

The amended Rule will become effective sixty days after the Statement of Basis and Purpose and the amended Rule are published in the Federal Register, and full compliance with the caller identification transmission provision will be required within 365 days after the date of publication. The Commission will announce at a future time the date by which full compliance with Section 310.4(b)(1)(iii)(B), the "do-not-call" registry provision, will be required. The Commission anticipates that full compliance with the "do not-call" registry provision will be required approximately seven months from the date a contract is awarded to create the national registry.

With respect to implementation of the "do-not-call" registry, I should also note that the Commission is working with the states to develop a single, national registry. The Commission envisions allowing consumers throughout the United States to register their preference not to receive telemarketing calls in a single transaction with one governmental agency. In addition, the Commission anticipates allowing telemarketers and sellers to access that consumer registration information through one visit to a national website, developed for that purpose. To further those goals, the Commission will allow all states, and the Direct Marketing Association (DMA), if it so desires, to download into the national registry—at no cost to the states or the DMA—the telephone numbers of consumers who have registered with them their preference not to receive telemarketing calls. Telemarketers and sellers will be allowed to access that data through the national registry as the information is received. It will take some time to achieve these goals completely, however, and the Commission will continue to work diligently with the states in an effort to harmonize these different systems.

✱ Finally, regarding your specific question, we expect the Commission will clarify in its Compliance Guide for businesses that small direct sellers, such as individuals selling CUTCO products, are unlikely to be impacted by this provision of the Rule. The staff currently preparing compliance guides anticipates, in particular, that these guides will advise that individuals calling small numbers of personal referrals out of their own homes will not be targeted for law enforcement action by the FTC staff. Of course, if a small direct seller wanted to avoid contacting a person whose number is on the registry, we anticipate that a single number lookup feature will be included in the registry to facilitate such efforts at no cost to the seller.

<sup>1</sup> Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures ("Franchise Rule"), 16 CFR Part 436.

The Honorable Arno Houghton - Page 3

We appreciate your interest in this matter, and hope that the above information and the enclosed materials are of assistance. Please let us know whenever we can be of service.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald S. Clark", with a long horizontal flourish extending to the right.

Donald S. Clark  
Secretary of the Commission